

**PUBLIC LAW BOARD NO. 7008**

**PARTIES TO THE DISPUTE:**

CSX Transportation, Inc.

-and-

Brotherhood of Maintenance of Way Employees  
Division of the International Brotherhood of Teamsters

**STATEMENT OF CLAIM:**

In connection with the objections raised during the hearing, the reasons stated in this appeal and furthermore violations of the Agreement, we hereby request Mr. P. P. Ruggieri, ID#516792, be exonerated from these charges against him and all matter relative thereof. We request Mr. Ruggieri immediately be reinstated as an employee with CSXT and his name will be placed back on any and all seniority rosters and compensated with all lost wages and benefits due to the carrier's action and violations of the provisions of Rule 24 and 25 of the June 1, 1999 CSXT/BMWED collective bargaining agreement, as so stated.

**OPINION OF BOARD:**

P. P. Ruggieri, ("Claimant") was hired by CSXT in the Engineering Department on October 1, 1976. At the time this case arose, October 17, 2005, Claimant Ruggieri was assigned as Machine Operator in the System Production Gang (SPG) 6XC5, working near Martinsburg, West Virginia. After the days' work, the crew stayed at the Carrier-provided lodging facility, a Quality Inn in Martinsburg. At approximately 10:30 pm that night, Claimant Ruggieri was alone in his room playing music on his radio. His co-worker, Machine Operator M. A. Portmess, was nearby at the swimming pool area talking with several other individuals.

At some point, Claimant Portmess knocked on the door to Ruggieri's room and spoke to him about the music he was playing on the radio. It is not entirely clear from the record whether Portmess asked Ruggieri to play the music louder so they all could hear or to turn down the sound. In any event, a verbal confrontation erupted between the two men, including mutual posturing and name-calling. This early phase of the confrontation ended when Ruggieri slammed his door and Portmess returned to join the other individuals near the swimming pool.

The record does not indicate who was the aggressor in that first phase of the incident, but all of the eyewitnesses concur that Ruggieri came out of his room a few minutes later in a state of obvious agitation and confronted Portmess. It also is plainly established in the record that these two individuals again exchanged mutual verbal insults and taunts. Although he denies that he was the aggressor, every eye-witness to the incident testified that Ruggieri escalated the situation to physical violence by throwing the first punch, hitting Portmess in the face. Portmess, a younger and apparently larger man, responded with his own barrage of punches and propelled Ruggieri backwards through a sliding glass door. The other individuals present intervened to stop the fight and the hotel management called the Berkeley County, West Virginia Sheriff's Department who responded and investigated the incident.

Portmess apparently suffered no serious injury but Claimant Ruggieri sustained injuries which required EMT treatment at the scene and an ambulance ride to a nearby hospital. Based on all of the eye-witness reports, however, the Berkeley County Sheriff Deputy concluded that Claimant Ruggieri had escalated a verbal argument to a physical confrontation and thrown the first punches. After the statements were gathered, Claimant Ruggieri was taken by ambulance to the local hospital to receive medical attention for his wounds after which he was charged with misdemeanor assault.

Following due notice and a formal investigation at which the foregoing facts were developed, the Carrier rejected the Claimant's testimony that he was innocent of any wrongdoing. Based on the investigation record, Carrier terminated the employment of Mr. Ruggieri on grounds that he had engaged in "conduct unbecoming an employee of CSX Transportation", and violations of CSX Transportation Operating Rules-General Regulations GR2 and GR-2A, as well as, CSX Transportation Policy Statement on Harassment and CSX Policy On Workplace Violence.

In perfecting the appeal, the Organization asserted at the outset a violation of due process because "[t]he carrier did not provide us our request for management records for the purpose of researching issues related to this investigation in order for us to not only prepare, but also provide Mr. Ruggieri with a fair and impartial hearing. A written response was never received as our letter requested. The proper objection was made on the record, but the hearing officer continued to proceed with the hearing over our objection". In addition, the Organization urged that even if the Claimant was culpable, his guilt should be mitigated by a his many years of service to warrant a more lenient penalty than outright termination.

On the threshold issue of due process and "pre-investigation discovery", the language in Rule 24(i) does not require the Carrier to provide summaries of testimony or investigative materials to the Organization prior to the hearing. Consequently, we find no evidence of a fatal due process violation on this record. On the issue of who was the aggressor, Carrier adduced persuasive evidence, including the following statements from an apparently disinterested eye-witness:

I Carlos Rios was sitting by the pool side with two other men drinking beer. One of the men named Mark heard music coming from another room. It was loud so Mark went up to the room 4 or 5 times to see if the person who was in the room would open the door so we could have some music to listen to while we sit and drink beer. So finally the music stops and Mark goes over again and knocks on the door the man that was in the room came out in his

underwear and was yelling out 'come on, come on in the room.' So then Mark is making fun of him telling him to come on with his hands and then the dude that was in the room closes the door and Mark leaves to go back to his room to get everybody a beer. So as Mark comes back from his room with a handfull of beer the dude that was in the room came out with pants on looking for Mark. So when Mark came out his room the dude runs to Mark and punches him and they begin to swing at each other and they grab each other and began to tussle around and they hit the glass window and fell to the floor hitting each other and that's when I grab one of them and broke it up.

In rejecting the Claimant's assertions of innocence, the Carrier also obviously relied on the report of the Berkeley Count, West Virginia Sheriffs who made the on-site investigation:

On Monday 17 October 2005 (I), Deputy S.D. Myers responded to the Quality Inn located in Martinsburg for a battery that had just occurred. Deputy Myers arrived and was met by the suspect that was being treated by EWS already on the scene. Deputy Myers speaks to the victim a Mark Portmess who advised that he went over to the Peters room and ask if he would turn the music down. Mark advised that Peter would not answer the door so the Mark called the front desk for assistance. Mark knocked on the door again when Peter came out in his underwear yelling obscenities at Mark telling him to leave. Mark went over to the pool area to speak to friends and decided to go to his room to get some beer. Mark stopped and knocked Peters door again asking him to turn the music down. Mark went into his room to get some beer, while walking back to the pool area Peter came out of room now with his pants on yelling and asking where Mark was Mark [sic]. Mark advised he kept walking towards his friends when Peter confronted Mark taunting him with name-calling telling him to come on. Mark advised that he and Peter starting fighting falling into a glass window in the motel. Mark advised that the friends sitting at the pool came over to break up the fighting. Peter was transported to the City Hospital for treatment from the glass cut.

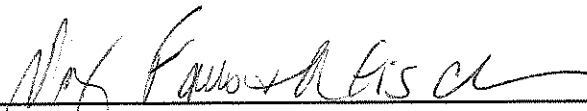
This was probative evidence of record which the Carrier obviously credited over the denials of the Claimant that he was the aggressor and the escalator of the verbal argument to a physical assault. It is well-settled that in the appellate-style arbitration which characterizes RLA §3 proceedings, a board of arbitration faced with a cold transcript does not second-guess credibility conflict determinations made on the property at the trial level.


We have carefully considered each of the arguments of the Organization but we must conclude that there is no fatal due process violation shown on this record, that the Carrier met its burden of proving the charges against the Claimant and that discharge of the aggressor in a physical altercation

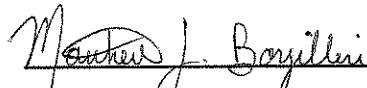
in the workplace is not arbitrary, unreasonable or unprecedented . In the final analysis, the sad ending of this Claimant's long railroad career was self-inflicted, and there is not sufficient mitigating evidence to justify arbitral intervention to reduce the penalty.

AWARD

Claim denied.

  
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Nancy Faircloth Eischen, Chair

  
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Union Member 11-2-07

  
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Company Member  
11/2/2007